

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2018

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.No.1747 of 2013

N.Ramakrishnan ... Appellant/1st Respondent

Vs.

1.C.Sundar Raj

2.The Presiding Officer,
Principal Labour Court, Chennai ... Respondents/Petitioner &
2nd Respondent

Writ Appeal filed under Clause 15 of Letters Patent against
the order dated 31.01.2012 passed by this Court in Writ
Petition No.42083 of 2006

Prayer in WP.No.42083/06:Writ Petition preferred under Article
226 of the Constitution of India praying for the issue of a Writ
of Certiorari, Calling for the records relating to the Award
dated 25/02/2004 passed in I.D.No.1270/1992 and quash the same.

For Appellant : Mr.A.Amal Raj

For R1 : Mr.S.Patrick,
for Mr.K.Rajasekaran

JUDGMENT

(Judgment of the Court was delivered by K.K.SASIDHARAN, J.)

This intra court appeal is directed against the order dated
31 January, 2012 in Writ Petition No.42083 of 2006, whereby and
whereunder while allowing the writ petition filed by the
Management challenging the award dated 25 February, 2004 in
I.D.No.1270 of 1992, the learned Single Judge modified the
punishment of reinstatement with back wages into one of
compensation. The learned Single Judge directed the respondent
to pay a sum of 2,42,000/- (Rupees Two Lakhs Forty Two thousand
only) as compensation to the appellant, in lieu of the order
directing reinstatement. However, while issuing such a
direction, the learned Single Judge permitted the first
respondent to adjust the amount paid under Section 17-B of the

Industrial Disputes Act, 1947. The said order is challenged primarily on the ground that the learned Single Judge was not correct in adjusting the amount paid to the employee in discharge of a statutory obligation under Section 17-B of the Industrial Disputes Act.

2. We have heard the learned counsel for the respective parties.

3. The Labour Court, Chennai, in I.D.No.1270 of 1992, passed an award holding that the non-employment of the appellant was not justified. The Labour Court directed the first respondent to reinstate the appellant into service with back wages, continuity of service and all other attendant benefits.

4. The award was challenged before the Writ Court in W.P.No.42083 of 2006. The learned Single Judge on a consideration of the entire factual matrix opined that the payment of compensation is the appropriate relief in the subject matter. The learned Single Judge therefore, modified the relief granted by the Labour Court. The order directing reinstatement was modified on condition that the first respondent shall pay compensation to the appellant. The learned Single Judge thereafter, computed the compensation at Rs.2,42,000/- (Rupees Two Lakhs Forty Two Thousand only).

5. The appellant has no grievance with regard to the computation made by the learned Single Judge. The only grievance of the appellant is that the learned Single Judge was not correct in adjusting the amount paid by the first respondent under Section 17-B of the Industrial Disputes Act. We do see considerable force in the arguments advanced on behalf of the appellant.

6. The learned Single Judge was justified in modifying the punishment. The learned Single Judge ought to have directed the first respondent to pay the compensation to the appellant without reference to the payment made under Section 17-B of the Industrial Disputes Act.

7. The payment made under Section 17-B of the Industrial Disputes Act was in discharge of a statutory liability. There was an order of reinstatement in favour of the appellant. The order was stayed by the writ court subject to the condition that the first respondent shall pay wages under Section 17-B of the Industrial Disputes Act. There is no question of adjusting the wages paid under Section 17-B of the Industrial Disputes Act, while computing the compensation payable to the employee in lieu of reinstatement.

8. The benefits under Section 17(b) of the Industrial Disputes Act 1947 is given to the employee who is armed with an

award passed by the Labour Court. In case the execution of the award is delayed on account of the challenge made by the employer, the workmen must be in a position to survive during the currency of such proceedings. The award would be in paper, in case its benefit is not given to the workmen during the currency of the proceedings initiated by the employer.

9. The Hon'ble Supreme Court in *Rajeshwar Mahto Vs. Alok Kumar Gupta, G.M. M/S.Birla Corporation Ltd.*, (2018 (3) SCALE 323) considered the scope and ambit of Section 17(b) of the Industrial Disputes Act, 1947 and made the legal position very clear that the object of Section 17(b) is to relieve, to a certain extent, the hardship that is caused to the workman due to delay in implementation of the award during the pendency of proceedings in which the said award is under challenge before the Court and the liability would not extinguish even if the employer succeed in the appeal.

The Supreme Court said,

"20. In other words, even if the employer eventually succeeds in its appeal against his employee, in which such order was passed during the pendency of employer's appeal, the employer continues to remain under legal obligation to comply with such order passed by the Court under Section 17-B of the Act in favour of the employee. To put it in short, an order passed under Section 17-B of the Act does not merge with the final order passed in the appeal and being an independent order, it remains alive for enforcement."

10. We are therefore of the view that the order passed by the learned Single Judge requires to be modified, in so far as the direction for adjustment of compensation amount is concerned.

11. We direct the first respondent to pay a sum of Rs.2,42,000/- (Rupees Two Lakhs Forty Two Thousand only) to the appellant in lieu of reinstatement in service. The payment should be in addition to the wages paid or due to the appellant under Section 17-B of the Industrial Disputes Act.

12. The order dated 31 January, 2012 in Writ Petition No.42083 of 2006 is modified to the above extent. The payment shall be made within a period of three months from the date of receipt of a copy of this Judgment.

13. The intra court appeal is allowed to the extent indicated above. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

The Presiding Officer,
Principal Labour Court,
Chennai.

+1 cc to Mr.k.Rajasekaran Advocate sr 17537
+1 cc to Mr.A.Amalraj Advocate sr 17331

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